

“(2)(A) The Federal Acquisition Regulation shall provide alternatives to payment bonds as payment protections for suppliers of labor and materials under contracts referred to in subparagraph (C).

“(B) The contracting officer for a contract shall—

“(i) select, from among the payment protections provided for in the Federal Acquisition Regulation pursuant to subparagraph (A), one or more payment protections which the offeror awarded the contract is to submit to the Federal Government for the protection of suppliers of labor and materials for such contract; and

“(ii) specify in the solicitation of offers for such contract the payment protection or protections so selected.

“(C) The regulations required under subparagraph (A) and the requirements of subparagraph (B) apply with respect to contracts referred to in subsection (a) of the first section of the Miller Act [40 U.S.C. 270a(a)] that are greater than \$25,000 but not greater than \$100,000.”

WAIVER OF SECTIONS 270a to 270d OF THIS TITLE BY SECRETARY OF THE TREASURY

Act July 11, 1941, ch. 290, §3(b), 55 Stat. 585, which authorized the Secretary of the Treasury, in his discretion, to waive sections 270a to 270d of this title with respect to certain contracts entered into for the Coast Guard during the national emergency, was repealed by Joint Res. July 25, 1947, ch. 327, §1, 61 Stat. 449.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 270b, 270d, 270d-1, 270e, 270f of this title; title 10 section 2701; title 15 sections 636, 637; title 25 sections 47a, 1656; title 31 section 9303; title 39 section 410; title 42 sections 1594, 9619, 11707.

§ 270b. Rights of persons furnishing labor or material

(a) Every person who has furnished labor or material in the prosecution of the work provided for in such contract, in respect of which a payment bond is furnished under sections 270a to 270d-1 of this title and who has not been paid in full therefore before the expiration of a period of ninety days after the day on which the last of the labor was done or performed by him or material was furnished or supplied by him for which such claim is made, shall have the right to sue on such payment bond for the amount, or the balance thereof, unpaid at the time of institution of such suit and to prosecute said action to final execution and judgment for the sum or sums justly due him: *Provided, however,* That any person having direct contractual relationship with a subcontractor but no contractual relationship express or implied with the contractor furnishing said payment bond shall have a right of action upon the said payment bond upon giving written notice to said contractor within ninety days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material for which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. Such notice shall be served by mailing the same by registered mail, postage prepaid, in an envelop addressed to the contractor at any place he maintains an office or conducts his business, or his residence, or in any manner in which the United States marshal of the district in which the public improvement is situated is authorized by law to serve summons.

(b) Every suit instituted under this section shall be brought in the name of the United States for the use of the person suing, in the United States District Court for any district in which the contract was to be performed and executed and not elsewhere, irrespective of the amount in controversy in such suit, but no such suit shall be commenced after the expiration of one year after the day on which the last of the labor was performed or material was supplied by him. The United States shall not be liable for the payment of any costs or expenses of any such suit.

(Aug. 24, 1935, ch. 642, §2, 49 Stat. 794; Pub. L. 86-135, §1, Aug. 4, 1959, 73 Stat. 279.)

AMENDMENTS

1959—Subsec. (b). Pub. L. 86-135 substituted “day on which the last of the labor was performed or material was supplied by him” for “date of final settlement of such contract”.

EFFECTIVE DATE

Section effective upon expiration of sixty days after Aug. 24, 1935, but not applicable to any contract awarded pursuant to any invitation for bids issued on or before the date it takes effect, or to any persons or bonds in respect of any such contract, see section 7 of act Aug. 24, 1935, set out as a note under section 270a of this title.

RETROACTIVE EFFECT

Section 3 of Pub. L. 86-135 provided that: “The rights of laborers and material men under contracts entered into before the effective date [Aug. 4, 1959] of this amendment [amending this section and section 270c of this title] shall not be affected.”

FEDERAL RULES OF CIVIL PROCEDURE

Parties, see rule 17, Title 28, Appendix, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 270d, 270d-1, 270e, 270f of this title; title 10 section 2701; title 15 section 636; title 25 sections 47a, 1656; title 31 sections 3905, 9303; title 39 section 410; title 42 sections 9619, 11707.

§ 270c. Right of person furnishing labor or material to copy of bond

The department secretary or agency head of the contracting agency is authorized and directed to furnish, to any person making application therefor who submits an affidavit that he has supplied labor or materials for such work and payment therefor has not been made or that he is being sued on any such bond, a certified copy of such bond and the contract for which it was given, which copy shall be prima facie evidence of the contents, execution, and delivery of the original. Applicants shall pay for such certified copies such fees as the department secretary or agency head of the contracting agency fixes to cover the cost of preparation thereof.

(Aug. 24, 1935, ch. 642, §3, 49 Stat. 794; Pub. L. 86-135, §2, Aug. 4, 1959, 73 Stat. 279; Pub. L. 98-269, Apr. 18, 1984, 98 Stat. 156.)

AMENDMENTS

1984—Pub. L. 98-269 substituted “department secretary or agency head of the contracting agency” for “Comptroller General” in two places.

1959—Pub. L. 86-135 struck out “, and, in case final settlement of such contract, has been made, a certified

statement of the date of such settlement, which shall be conclusive as to such date upon the parties” and “and certified statements” after “original” and “certified copies”, respectively.

EFFECTIVE DATE

Section effective upon expiration of sixty days after Aug. 24, 1935, but not applicable to any contract awarded pursuant to any invitation for bids issued on or before the date it takes effect, or to any persons or bonds in respect of any such contract, see section 7 of act Aug. 24, 1935, set out as a note under section 270a of this title.

RETROACTIVE EFFECT

Rights of laborers and material men under contracts entered into before Aug. 4, 1959, unaffected, see section 3 of Pub. L. 86-135, set out as a note under section 270b of this title.

FEDERAL RULES OF CIVIL PROCEDURE

Proof of official records, see rule 44, Title 28, Appendix, Judiciary and Judicial Procedure.

Effect of rule 44 on this section, see note by Advisory Committee under that rule.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 270b, 270d, 270d-1, 270e, 270f of this title; title 10 section 2701; title 15 section 636; title 25 sections 47a, 1656; title 31 section 9303; title 39 section 410; title 42 sections 9619, 11707.

§ 270d. “Person” defined

The term “person” and the masculine pronoun as used in sections 270a to 270d-1 of this title shall include all persons whether individuals, associations, copartnerships, or corporations.

(Aug. 24, 1935, ch. 642, § 4, 49 Stat. 794.)

EFFECTIVE DATE

Section effective upon expiration of sixty days after Aug. 24, 1935, but not applicable to any contract awarded pursuant to any invitation for bids issued on or before the date it takes effect, or to any persons or bonds in respect of any such contract, see section 7 of act Aug. 24, 1935, set out as a note under section 270a of this title.

CROSS REFERENCES

Definition of “person” as used in any Act of Congress, see section 1 of Title 1, General Provisions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 270b, 270d-1, 270e, 270f of this title; title 10 section 2701; title 15 section 636; title 25 sections 47a, 1656; title 31 section 9303; title 39 section 410; title 42 sections 9619, 11707.

§ 270d-1. Waiver of sections 270a to 270d with respect to small contracts

Sections 270a to 270d of this title do not apply to a contract in an amount that is not greater than \$100,000.

(Aug. 24, 1935, ch. 642, § 5, as added Pub. L. 103-355, title IV, § 4104(b)(1)(A), Oct. 13, 1994, 108 Stat. 3341.)

PRIOR PROVISIONS

A prior section 5 of act Aug. 24, 1935, was renumbered section 7 and is set out as an Effective Date note under section 270a of this title.

EFFECTIVE DATE

For effective date and applicability of section, see section 10001 of Pub. L. 103-355, set out as an Effective

Date of 1994 Amendment note under section 251 of Title 41, Public Contracts.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 270b, 270d, 270e, 270f of this title; title 10 section 2701; title 15 section 636; title 25 sections 47a, 1656; title 31 section 9303; title 39 section 410; title 42 sections 9619, 11707.

§ 270e. Waiver of sections 270a to 270d-1 with respect to Army, Navy, Air Force, or Coast Guard contracts

The Secretary of the Army, the Secretary of the Navy, the Secretary of the Air Force, or the Secretary of Transportation may waive sections 270a to 270d-1 of this title with respect to cost-plus-a-fixed fee and other cost-type contracts for the construction, alteration, or repair of any public building or public work of the United States and with respect to contracts for the manufacturing, producing, furnishing, construction, alteration, repair, processing, or assembling of vessels, aircraft, munitions, materiel, or supplies of any kind or nature for the Army, Navy, Air Force, or Coast Guard, respectively, regardless of the terms of such contracts as to payment or title.

(Apr. 29, 1941, ch. 81, § 1, 55 Stat. 147; June 3, 1955, ch. 129, 69 Stat. 83; Pub. L. 89-670, § 6(b)(1), Oct. 15, 1966, 80 Stat. 938.)

AMENDMENTS

1955—Act June 3, 1955, authorized the Secretary of the Treasury to waive requirement of performance and payment bonds in connection with certain Coast Guard contracts, included the Secretary of the Air Force for purposes of clarification, made specific reference to cost-type contracts, and struck out proviso permitting bonds to be required for contracts which on Apr. 29, 1941, would have been subject to provisions of sections 270a to 270d of this title.

TRANSFER OF FUNCTIONS

Coast Guard transferred to Department of Transportation, and all functions, powers, and duties relating to Coast Guard of Secretary of the Treasury and of other officers and offices of Department of the Treasury transferred to Secretary of Transportation by Pub. L. 89-670, § 6(b)(1). Section 6(b)(2) of Pub. L. 89-670, however, provided that notwithstanding such transfer of functions, Coast Guard shall operate as part of Navy in time of war or when President directs as provided in section 3 of Title 14, Coast Guard. See section 108 of Title 49, Transportation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 10 section 2701; title 39 section 410; title 42 section 9619.

§ 270f. Waiver of sections 270a to 270d-1 with respect to transportation contracts

The Secretary of Transportation may waive sections 270a to 270d-1 of this title, with respect to contracts for the construction, alteration, or repair, of vessels of any kind or nature, entered into pursuant to sections 1535 and 1536 of title 31, the Merchant Marine Act, 1936 [46 App. U.S.C. 1101 et seq.], or the Merchant Ship Sales Act of 1946 [50 App. U.S.C. 1735 et seq.], regardless of the terms of such contracts as to payment or title.

(Apr. 29, 1941, ch. 81, § 2, as added Pub. L. 91-469, § 39, Oct. 21, 1970, 84 Stat. 1036; amended Pub. L. 97-31, § 12(12), Aug. 6, 1981, 95 Stat. 154.)